

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

**In the Matter of Rules and Regulations Implementing the
Telephone Consumer Protection Act of 1991**

CG Docket No. 02-278

This is a consumer response respectfully submitted by Stewart Abramson regarding petitions to the FCC that were submitted by Communication Innovators, the Cargo Airline Association, Call Assistant, and 3G Collect.

General Comments on Petitions Before the FCC

The FCC has requested input concerning petitions submitted by Communication Innovators, the Cargo Airline Association, Call Assistant, and 3G Collect. In each case, the petitioners request that the FCC in some way limit consumer protections afforded by the Telephone Consumer Protection Act (TCPA), particularly concerning calls made to cellular telephones.

Unlike landline telephones, most people carry their cellular telephones with them everywhere they go. Thus unsolicited computer-generated calls and text messages to cellular telephones are vastly more intrusive than unsolicited computer-generated calls to land line telephones. This is true irrespective of the nature of the call or text message (for instance, it is true irrespective of whether the call in question is commercial, informational, political, etcetera). In short, people do not want to receive unsolicited computer-generated calls or text messages on their cellular telephones (so-called “cell phone spam”). The FCC should act as a bulwark protecting consumers from cell phone spam.

Communication Innovators

The TCPA defines an “automatic telephone dialing system” as follows:

The terms automatic telephone dialing system and autodialer mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

The FCC needs to make a clear and convincing statement that when one uses a computer to dial telephone numbers from a list of telephone numbers (by either moving randomly through the list of numbers or by moving sequentially through the list of numbers), they are using an “automatic telephone dialing system”.

Petition by Cargo Airline Association

Those who wish to engage in telemarketing, and remain compliant with the TCPA, often need prior express consent to call consumers (for instance if the call is made by an automatic telephone dialing system to a cellular telephone). If a company wants to make telemarketing calls, and they want to rely on prior express consent that was obtained by a third party, then that is certainly within their prerogative. However, it is up to the calling party to make sure that they have, in fact, obtained prior express consent before calling. If the calling party wants to rely on a third party to obtain prior express consent, then it is up to the calling party to make sure that they deal with a reputable third party who is willing to stand behind their assertion that they have obtained prior express consent. For instance, the calling party can make sure that they only accept prior express consent assurances from a third party that is willing to indemnify the calling party if there are any problems. The FCC should not be involved in the relationship between the calling party and those that they might employ to obtain or ensure that prior express consent has been given.

The FCC needs to make a clear and convincing statement that it is the responsibility of the calling party to make sure that they have obtained prior express consent before they call, and that if they do not have prior express consent, then they may be liable for violations of the TCPA where prior express consent is required.

3G Collect

It is a violation of the TCPA to call a cellular telephone and play a prerecorded message without prior express consent (irrespective of whether the call is commercial, informational, or political in nature). Those who wish to make calls that play prerecorded messages have several choices. They can remove all cellular telephone numbers from their calling lists, they can obtain prior express consent of the called party, or they can use a live person to ask for permission before playing their prerecorded message.

The FCC needs to make a clear and convincing statement that it is a violation of the TCPA to call a cellular telephone and play a prerecorded message without prior express consent (irrespective of whether or not the call is commercial, informational, or political in nature). The FCC needs to inform those who wish to make calls that play a prerecorded message that they have multiple choices as to how they can do so and still be in compliance with the TCPA.

Call Assistant

The TCPA limits the use of prerecorded telephone messages to consumers. If a company wants to have an “intelligent computer” or an “intelligent human” respond to consumers when they answer the telephone by playing prerecorded responses, they can certainly do so. But if the responses are prerecorded, then they are prerecorded. The fact that an “intelligent computer” or an “intelligent human” decides to respond to a consumer’s “Hello” when the consumer answers

the phone by playing a prerecorded message that says “Hi, this is Mary with Cardholder Services”, doesn’t change the fact that the caller delivered a prerecorded message.

The FCC needs to make a clear and convincing statement that it doesn’t matter if a caller uses an “intelligent computer” or an “intelligent human” to deliver a prerecorded message, because either way the caller delivered a prerecorded message.